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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GRACE ALBANESE,)	
)	Case No. 2:17-cv-01663-JCM-NJK
Plaintiff(s),)	
)	
v.)	<u>Report and Recommendation</u>
)	
HOMELAND SECURITY,)	
)	
Defendant(s).)	

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft*

1 v. *Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court
2 must accept as true all well-pled factual allegations contained in the complaint, but the same
3 requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals of the
4 elements of a cause of action, supported only by conclusory allegations, do not suffice. *Id.* at 678.
5 Secondly, where the claims in the complaint have not crossed the line from conceivable to plausible,
6 the complaint should be dismissed. *Twombly*, 550 U.S. at 570. Allegations of a *pro se* complaint
7 are held to less stringent standards than formal pleadings drafted by lawyers. *Hebbe v. Pliler*, 627
8 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro se* pleadings is required
9 after *Twombly* and *Iqbal*).

10 On June 22, 2017, the Court screened Plaintiff's complaint and found that her allegations
11 failed to state a claim. Docket No. 3. The Court granted Plaintiff leave to amend. *Id.* Plaintiff has
12 now filed an amended complaint that suffers from the same deficiencies outlined previously. Docket
13 No. 4. Moreover, given Plaintiff's inability to cure those deficiencies despite being given an
14 opportunity to do so, further amendment would be futile. For these reasons, the undersigned
15 **RECOMMENDS** that this case be **DISMISSED**.

16 DATED: June 27, 2017

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19 _____
NANCY J. KORPE
United States Magistrate Judge

20 **NOTICE**

21 Pursuant to Local Rule IB 3-2, any objection to this Report and Recommendation must be
22 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has
23 held that the courts of appeal may determine that an appeal has been waived due to the failure to file
24 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also
25 held that (1) failure to file objections within the specified time and (2) failure to properly address and
26 brief the objectionable issues waives the right to appeal the District Court's order and/or appeal
27 factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.
28 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).